

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Sections 3(n)
and 332 of the Communications
Act

Regulatory Treatment of Mobile
Services

To: The Commission

GN Docket No. 93-24

JUL 11 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

REPLY COMMENTS OF BELL SOUTH

BELL SOUTH CORPORATION
BELL SOUTH TELECOMMUNICATIONS, INC.
BELL SOUTH CELLULAR CORP.
BELL SOUTH WIRELESS, INC.
MOBILE COMMUNICATIONS CORPORATION OF
AMERICA

William B. Barfield
Jim O. Llewellyn
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610

Charles P. Featherstun
David G. Richards
1133 21st Street, N.W.
Washington, D.C. 20036
(202) 463-4132

July 11, 1994

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and 332 of the Communications
Act)

Regulatory Treatment of Mobile
Services)

GN Docket No. 93-252

To: The Commission

REPLY COMMENTS OF BELL SOUTH

BellSouth Corporation, BellSouth Telecommunications, Inc., BellSouth Cellular Corp., BellSouth Wireless, Inc., and Mobile Communications Corporation of America (collectively "BellSouth") hereby reply to comments filed in response to the Commission's *Further Notice of Proposed Rule Making ("FNPRM")* in this proceeding.

SUMMARY

Fifty-eight parties have commented in this proceeding. Significantly, thirty-two parties opposed the imposition of the proposed spectrum cap.^{1/} Only

^{1/} The parties who unconditionally opposed the proposed spectrum cap are: American Mobile Satellite Corporation; Celpage, Inc.; Metrocall, Inc.; Network USA; RAM Technologies, Inc.; OneComm Corporation; CTIA; McCaw Cellular Communications, Inc.; The Southern Company; Pittencrieff Communications, Inc.; American Mobile Telecommunications Association, Inc.; RAM Mobile Data USA Limited Partnership; Southwestern Bell Corporation; Comcast Corporation; Dial Page, Inc.; Nextel Communications, Inc.; Motorola, Inc.; Airtouch Communications; The Bell Atlantic Companies; NABER; Personal Communications

(continued...)

four parties supported the imposition of an aggregate spectrum cap.^{2/} In addition, there was overwhelming support for applying to CMRS the least restrictive of each of the relevant service-specific rules.^{3/} Accordingly, BellSouth urges the Commission to abandon its spectrum cap proposal, given the substantive reasons for opposition to the cap, and to adopt the least restrictive rules possible for CMRS. Further, BellSouth supports the imposition of a service-specific spectrum limit on ESMR licensees, similar to those imposed on cellular and PCS licensees. In support of the Bell Atlantic Companies, BellSouth urges the Commission to eliminate the separate subsidiary requirements currently imposed on select cellular providers. BellSouth also supports the general amnesty period proposed by various parties, as well as the expeditious Phase II licensing of 900 MHz systems. Finally, BellSouth recommends that interoperability requirements be removed from all CMRS providers.^{4/}

^{1/}(...continued)

Industry Association; Century Cellunet, Inc.; NYNEX; Pagemart, Inc.; GTE; Paging Network, Inc.; TRW, Inc.; Roseville Telephone Company; and BellSouth. The following parties opposed the aggregate spectrum cap only to the extent it that would apply to them: Constellation Communications, Inc.; Rural Cellular Association; and Loral/QUALCOMM Partnership, L.P.

- ^{2/} These four parties are: Vanguard Cellular Systems, Inc.; New Par; American Personal Communications; and Brown and Schwaninger. Twenty-two parties did not take a position on adoption of the spectrum cap.
- ^{3/} See Comments of BellSouth at 2; Comments of U.S. WEST, Inc. at 6; Comments of Nextel at 49-50; Comments of GTE at 3-9; Comments of NABER at IV; and Comments of RAM Technologies, Inc. at 4.
- ^{4/} Although not specifically addressed herein, BellSouth also notes that it was not the only party to find the omission of proposed rules from the *FNPRM* problematic. See Comments of the American Petroleum Institute at 3-4 and Comments of BellSouth at note 4.

DISCUSSION

I. REGULATORY PARITY REQUIRES THAT ENHANCED SMR LICENSEES BE SUBJECT TO SPECTRUM LIMITS SIMILAR TO THOSE IMPOSED ON CELLULAR AND PCS LICENSEES

Although service-specific caps have been imposed on PCS and cellular services, no cap has been imposed on Enhanced SMR ("ESMR") services, which the Commission expects to be comparable to PCS and cellular. ESMR operators even hold themselves out as competitive alternatives to cellular.^{5/} An ESMR operator providing service throughout an MTA is eligible for 40 MHz of PCS spectrum in addition to its 19 MHz of SMR spectrum. On the other hand, a 20% investor in a cellular system covering 10% of an MTA only is eligible for a single 10 MHz block of PCS spectrum. These rules do not equalize competitors or enhance competition; rather, they stifle competition by imposing widely varying limits on the ability of licensees to compete with one another. BellSouth supports both Airtouch Communications and the Bell Atlantic Companies who assert that regulatory parity requires that similar caps be imposed on ESMR.^{6/}

^{5/} See Comments of Dial Page, Inc. at 1-2; Comments of Nextel Communications, Inc. at 5; Comments of OneComm Corporation at 2; and Comments of American Mobile Telecommunications Association, Inc. at 14.

^{6/} Comments of the Bell Atlantic Companies at 2, 9-12 and Comments of Airtouch Communications at 7; see Comments of McCaw Cellular Communications, Inc. at 18. BellSouth notes that this cap is a service-specific, PCS spectrum cap, and not an aggregate CMRS spectrum cap, which should have been imposed in Docket 90-314. The Commission inexplicably deferred this issue, however, to the present proceeding, thereby confusing the appropriate imposition of a service-specific cap with the more general CMRS cap. See *Amendment of the Commission's* (continued...)

II. SEPARATE SUBSIDIARY RULES SHOULD BE REMOVED FROM ALL CMRS IN ORDER TO CONFORM TO PCS

BellSouth supports the position of the Bell Atlantic Companies that the Commission must resolve the disparity created by the separate subsidiary rule.^{7/} Under the currently regulatory scheme, the Regional Bell Operating Companies ("RBOCs") uniquely are precluded from engaging in the provision of cellular service except through a separate subsidiary, as provided for in Section 22.901 of the Commission's rules,^{8/} while other entities may provide all CMRS services in a unified business structure.

The separate subsidiary requirements do not apply to non-RBOC cellular carriers, nor do they exist for the provision of SMR services,^{9/} and the Commission recently declined to impose these separate subsidiary requirements upon the provision of PCS.^{10/} Under these circumstances, the continued maintenance of the separate subsidiary cellular eligibility restrictions on the

^{6/}(...continued)

Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, *Memorandum Opinion and Order*, FCC 94-144 at ¶ 104 (released June 13, 1994).

^{7/} Comments of the Bell Atlantic Companies at 6-7.

^{8/} See 47 C.F.R. § 22.901.

^{9/} See 47 C.F.R. §§ 22.901, 90.603(c).

^{10/} *Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order*, 8 FCC Rcd. 7700, 7751 (1993); *Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, First Report and Order*, 8 FCC Rcd. 7162, para. 31 (1993). RBOCs are allowed to provide PCS without a separate subsidiary.

RBOCs contravenes not only the regulatory parity for like services mandated by Congress, but also the Commission's well-established policy of treating similarly situated licensees in the same manner. ^{11/}

The underlying rationale for the establishment of the separate subsidiary restriction no longer exists. At the time the restriction was adopted in 1982, it was designed to protect against improper cross-subsidization that could result in anticompetitive conduct in the infant cellular marketplace, as well as possible interconnection abuses. ^{12/} CMRS, and the cellular industry in general, is now a competitive market, ^{13/} so the potential for such abuses is inconsequential. LEC interconnection requirements are well established, and there are other mechanisms to protect against interconnection abuses. ^{14/} In this regard, the Commission has recognized that current regulations are sufficient to protect against anticompetitive practices such that no new separate subsidiary requirements were imposed upon RBOC LEC participation in PCS. ^{15/} Accordingly, as the Commission has refrained from imposing separate subsidiary

^{11/} See *Melody Music, Inc. v. FCC*, 345 F.2d 730, 733 (D.C. Cir. 1965); *Public Media Center v. FCC*, 587 F.2d 1322, 1331 (D.C. Cir. 1978).

^{12/} *Cellular Communications Systems, Memorandum Opinion and Order on Reconsideration*, 89 FCC 2d 58, 78 (1982) (proceeding terminated).

^{13/} *NPRM* at ¶ 62; BellSouth PCS Comments, GEN Docket No. 90-314, filed Nov. 9, 1992 at 67-69.

^{14/} The Commission has made clear that the interconnection obligations currently imposed upon LECs with regard to Part 22 licensees will apply to all CMRS licensees. *Implementation of Sections 3(n) and 332 of the Communications Act*, GN Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd. 1411, ¶¶ 20, 227-239 (1994).

^{15/} See *Amendment of the Commission's Rules to Establish New Personal Communications Services*, GEN Docket No. 90-314, *Second Report and Order*, 8 FCC Rcd. 7700, 7751 (1993).

requirements on RBOC LEC provision of PCS, the Commission should remove the separate subsidiary requirements with regard to the RBOC LEC provision of any CMRS service.

Unless the separate subsidiary requirement is eliminated, the potential exists for the creation of market inefficiencies and a competitive imbalance among the RBOC LECs. For example, a RBOC LEC ("LEC A") without a cellular presence in a market may provide PCS without restriction, while a RBOC LEC ("LEC B") with a cellular presence in the same market is unfairly hindered by the separate subsidiary rule. The separate subsidiary restriction inhibits the creation of economies of scope and scale. Forcing LEC A to maintain a separate subsidiary and associated staff creates an inefficiency by preventing LEC A from creating the same competitive structure of LEC B for the provision of competitive services. Accordingly, the separate subsidiary requirement should be removed from all CMRS providers in order to create regulatory parity among like services, remove economic inefficiencies, and conform to the Commission's PCS rulings.

III. THE COMMISSION SHOULD ADOPT A GENERAL AMNESTY PERIOD DURING THE TRANSITION TO CMRS REGULATION

In its comments, Celpage, Inc. suggests that the Commission "adopt a fairly generous 'amnesty' period following adoption of the CMRS rules to enable licensees to become familiar with the new world order of CMRS." ^{16/} Other

^{16/} Comments of Celpage, Inc. at 20.

parties made similar suggestions.^{17/} BellSouth supports adoption of such an amnesty period.

The subject proceeding proposes to change the regulatory structure by which most existing mobile services are regulated. Under this new regulatory structure, substantially similar services will be subject to the same regulation. Services, formerly governed by one set of regulations, will be subject to new regulations. These new regulations may adversely affect the state of competition in CMRS if an amnesty period is not adopted. For example, if existing Part 90 and Part 22 licensees are subject to new regulations which closely approximate Part 22 requirements, Part 22 licensees will have little trouble adjusting to the new rules. Part 90 licensees, on the other hand, most likely will have to slow expansion and development plans while their personnel become accustomed to the new rules or risk substantial forfeitures for modifications implemented pursuant to the old regulatory structure. A limited amnesty period which protects licensees from forfeiture liability during a transition period will eliminate any advantage Part 22 licensees may have as a result of their knowledge of the rules. An amnesty period also will promote communication between licensees and the Commission during this transition.^{18/}

^{17/} See Comments of Metrocall, Inc. at 20; Comments of Network USA at 20; and Comments of RAM Technologies, Inc. at 19-20.

^{18/} A limited amnesty period can also be used as a means for updating the Commission's records. The Commission adopted such an amnesty period in the pending proceeding to rewrite Part 22. See *Revision of Part 22*, CC Docket 92-115, *Notice of Proposed Rulemaking*, 7 FCC Rcd. 3658 (1992), summarized, 57 Fed. Reg. 29,260 (1992).

IV. COMMENTERS SUPPORT THE EXPEDITIOUS PHASE II LICENSING OF 900 MHz SYSTEMS

BellSouth supports the parties who urge the Commission to begin Phase II 900 MHz licensing on the basis of MTA boundaries.^{19/} BellSouth also supports the proposal to provide existing 900 MHz licensees a "fill-in" period to expand their systems to MTA boundaries free from competing applications.^{20/} To subject existing licensees to competing applications as they attempt to expand their systems to MTA boundaries would be inequitable given that "for almost eight years, 900 MHz licensees have been caught in a kind of regulatory no-man's land."^{21/} While awaiting commencement of Phase II licensing, many 900 MHz licensees developed new technologies and innovative services to satisfy customer needs. These licensees expanded coverage to meet consumer demand by building unprotected sites beyond their protected designated filing areas. These licensees should not be forced to compete with new systems licensed on an MTA basis, given their contributions to the development of 900 MHz service. Accordingly, BellSouth urges the Commission to create a fill-in period during which existing

^{19/} See Comments of RAM Mobile Data USA Limited Partnership at 3-4; Comments of American Mobile Telecommunications Association at 17; and Comments of Geotek Communications, Inc. at 9-11; *see also* Comments of BellSouth at 20-21.

^{20/} See Comments of RAM Mobile Data USA Limited Partnership at 4; Comments of American Mobile Telecommunications Association, Inc. at 19; Comments of Geotek Communications, Inc. at 11; and Comments of NABER at 22.

^{21/} Comments of RAM Mobile Data USA Limited Partnership at 3; *see* Comments of American Mobile Telecommunications Association, Inc. at 18-19.

licensees can expand their systems to MTA boundaries free from competing applications. ^{22/}

V. INTEROPERABILITY REQUIREMENTS SHOULD BE REMOVED FROM ALL CMRS PROVIDERS

Despite the varying interests involved in this proceeding, virtually all commenters felt that either (1) no interoperability requirements were "warranted or needed" ^{23/} or (2) interoperability requirements should not be adopted for the types of CMRS they would be providing. ^{24/} It also was noted that interoperability requirements may impede innovative technical approaches to CMRS. ^{25/} Accordingly, BellSouth reiterates its opposition to any interoperability requirements and urges the Commission to remove existing interoperability requirements from all CMRS providers. ^{26/}

^{22/} At a minimum, existing licensees should be afforded protection for those unprotected sites constructed while awaiting the commencement of Phase II licensing.

^{23/} Comments of Personal Communications Industry Association at 14.

^{24/} See Comments of Paging Network, Inc. at 24; Comments of New Par at 9-11; Comments of Pittencrieff Communications, Inc. at 10; Comments of American Personal Communications at 4-5; Comments of American Mobile Telecommunications Association, Inc. at 7; Comments of Geotek Communications, Inc. at 18; Comments of Ericsson Corporation at 3; and Comments of NABER at 28-29.

^{25/} See Comments of American Mobile Telecommunications Association, Inc. at 7 and Comments of NABER at 29.

^{26/} See Comments of BellSouth at 15-16.


CONCLUSION

For the foregoing reasons, the Commission should abandon its spectrum cap proposal, remove separate subsidiary and interoperability requirements from all CMRS providers, adopt a general amnesty period during the transition to CMRS regulation, and begin expeditious Phase II licensing of 900 MHz systems.

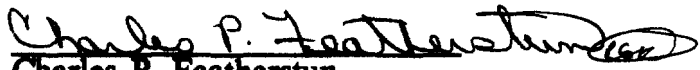
Respectfully submitted,

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS, INC.
BELLSOUTH CELLULAR CORP.
BELLSOUTH WIRELESS, INC.
MOBILE COMMUNICATIONS CORPORATION OF AMERICA

By:


William B. Barfield
Jim O. Llewellyn

1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610



Charles P. Featherstun
David G. Richards

1133 21st Street, N.W.
Washington, D.C. 20036
(202) 463-4132

July 11, 1994

Certificate of Service

I, Mary Jane Adcock, hereby certify that on this 11th day of July, 1994, copies of the foregoing "Reply Comments" were mailed via first class United States mail, postage prepaid, to those parties named on the attached service list.


Mary Jane Adcock

Service List

William J. Franklin, Esq.
1919 Pennsylvania Avenue, N.W., Suite 300
Washington, D.C. 20006-3404
(Attorney for CECR)

Richard Rubin, Esq.
Fleishman and Walsh
1400 Sixteenth Street, N.W., Suite 600
Washington, D.C. 20036
(Attorney for US Mobilcomm, Inc.)

Eliot J. Greenwald, Esq.
Howard C. Griboff, Esq.
Fisher Wayland Cooper Leader & Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W., Suite 400
Washington, D.C. 20006
(Attorneys for US Mobilcomm, Inc.)

Wayne V. Black
Dorothy E. Cukier
Keller and Heckman
1001 G Street, N.W., Suite 500 West
Washington, DC 20001
(Attorneys for United States Sugar Corporation)

Bruce D. Jacobs
Glenn S. Richards
Fisher Wayland Copper Leader & Zaragoza L.L.P.
2001 Pennsylvania Avenue, N.W., Suite 400
Washington, DC 20006
(Attorneys for American Mobile Satellite Corporation)

Frederick M. Joyce
Christine McLaughlin
Joyce & Jacobs
2300 M Street, NW, Suite 130
Washington, DC 20037
(Attorneys for Celpage Inc.)

Michael R. Carper
Vice President & General Counsel
OneComm Corporation
4643 Ulster Street, Suite 500
Denver, Colorado 80237

Michael F. Altschul
Vice President, General Counsel
Cellular Telecommunications Industry Association
1250 Connecticut Avenue, NW, Suite 200
Washington, DC 20036

Jay C. Keithley
Leon Kestenbaum
1850 M Street, N.W., Suite 1100
Washington, DC 20036
(Attorneys for Sprint Corporation)

William J. Franklin
1919 Pennsylvania Avenue, N.W., Suite 300
Washington, D.C. 20006-3404
(Attorney for LegalCom Services, Inc.)

Michael Hirsch
Vice President, External Affairs
Geotek Communications, Inc.
1200 19th Street, N.W., #607
Washington, DC 20036

William R. Miller
dba, Russ Miller Rental
3620 Byers Avenue
Fort Worth, Texas 76107

Robert A. Mazer
Nixon, Hargrave, Devans & Doyle
One Thomas Circle, NW. Suite 800
Washington, DC 20005
(Attorney for Constellation Communications, Inc.)

Raymond G. Bender, Jr.
J. G. Harrington
Dow, Lohnes & Albertson
1255 23rd Street, NW, Suite 500
Washington, DC 20037
(Attorneys for Vanguard Cellular Systems, Inc.)

Cathleen A. Massey
Regulatory Counsel
McCaw Cellular Communications, Inc.
1150 Connecticut Avenue, N.W., 4th Floor
Washington, DC 20036

Wayne V. Black
Joseph M. Sandri, Jr.
Keller and Heckman
1001 G Street, N.W., Suite 500 West
Washington, DC 20001
(Counsel for American Petroleum Institute)

Carole C. Harris
Christine M. Gill
Marc Berejka
Barry J. Ohlson
Keller and Heckman
1001 G Street, N.W., Suite 500 West
Washington, DC 20001
(Attorneys for The Southern Company)

Terry J. Romine
Lukas McGowan Nace & Gutierrez Chartered
1819 H Street, N.W., 7th Floor
Washington, DC 20006
(Attorney for Pittencrieff Communications, Inc.)

Carl W. Northrop
Bryan Cave
700 13th Street, N.W., Suite 700
Washington, DC 20005
(Attorney for Airtouch Paging and Arch Communications Group, Inc.)

Frederick J. Day, Esq.
1110 N. Glebe Road, Suite 500
Arlington, VA 22201-5720
(for Industrial Telecommunications Association, Inc. and the Council of Independent Communication Suppliers)

Thomas J. Casey
Jay L. Birnbaum
Timothy R. Robinson
Skadden, Arps, Slate Meagher & Flom
1440 New York Ave., N.W.
Washington, DC 20006
(Attorneys for New Par)

Thomas Gutierrez
David A. LaFuria
Lukas, McGowan, Nace & Gutierrez, Chartered
1819 H Street, N.W., 7th Floor
Washington, DC 20006
(Attorney for SunCom Mobile and Data, Inc.)

Robyn G. Nietert
Scott C. Cinnamon
Brown Nietert & Kaufman, Chartered
1920 N Street, N.W., Suite 660
Washington, DC 20036
(Attorneys for Global Cellular Communications, Inc. and
Jean M. Warren)

Elizabeth R. Sachs
Lukas, McGowan, Nace & Gutierrez Chartered
1819 H Street, N.W., 7th Floor
Washington, DC 20006
(Attorney for American Mobile Telecommunications Association,
Inc.)

Henry Goldberg
Jonathan Wiener
Daniel S. Goldberg
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, DC 20036
(Attorneys for RAM Mobile Data USA Limited Partnership)

Robert M. Lynch
Paula J. Fulks
175 E. Houston, Room 1218
San Antonio, Texas 78205
(Attorneys for Southwestern Bell)

Leonard J. Kennedy
Laura H. Phillips
Richard S. Denning
Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Washington, D.C. 20037
(Attorneys for Comcast Corporation)

Gerald S. McGowan
George L. Lyon, Jr.
Lukas, McGowan, Nace & Gutierrez, Chartered
1819 H Street, N.W., 7th Floor
Washington, DC 20006
(Attorneys for Dial Page, Inc.)

Robert S. Foosaner
Senior V.P., Government Affairs
Nextel Communications, Inc.
800 Connecticut Ave., N.W., Suite 1001
Washington, DC 20006

Mary Brooner
Manager, Wireless Regulatory Policies
Motorola, Inc.
1350 I Street, N.W.
Washington, DC 20005

Kenneth G. Starling
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, DC 20004
(Attorney for Airtouch Communications)

John T. Scott, III
Charon J. Harris
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, DC 20004
(Attorneys for the Bell Atlantic Companies)

David C. Jatlow
Young & Jatlow
2300 N Street, N.W., Suite 600
Washington, DC 20037

Donald M. Mukai
Jeffrey S. Bork
U S West, Inc.
1020 19th Street, N.W., Suite 700
Washington, DC 20036

David E. Weisman
Alan S. Tilles
Meyer, Faller, Weisman and Rosenberg, P.C.
4400 Jenifer Street, N.W., Suite 380
Washington, D.C. 20015

Mark J. Golden
Personal Communications Industry Association
1019 19th Street, N.W.
Washington, DC 20554

W. Bruce Hanks
President
Century Cellunet, Inc.
100 Park Avenue
Monroe, Louisiana 71203

Mark J. Tauber
Mark J. O'Connor
Piper & Marbury
1200 19th Street, N.W., 7th Floor
Washington, DC 20036

J. Barclay Jones
Vice President for Engineering
American Personal Communications
1025 Connecticut Avenue, N.W.
Washington, DC 20036

Edward R. Wholl
William J. Balcerski
NYNEX Corporation
120 Bloomingdale Road
White Plains, New York 10605

Phillip L. Spector
Susan E. Ryan
Paul, Wiess, Rifkind, Wharton & Garrison
1615 L Street, N.W.
Washington, DC 20036
(Attorneys for Pagemart, Inc.)

Gail L. Polivy
1850 M Street, N.W., Suite 1200
Washington, DC 20036
(Attorney for GTE)

Judith St. Ledger-Roty
Reed Smith Shaw & McClay
1200 18th Street, N.W.
Washington, DC 20036
(Attorney for Paging Network, Inc.)

William J. Franklin, Esq.
1919 Pennsylvania Avenue, N.W., Suite 300
Washington, D.C. 20006-3404
(Attorney for PCC Management Corporation, as well as Simrom,
Inc., SMR Systems, Inc., and Air Spectrum III, Inc.)

Thomas J. Keller
Verner, Liipfert, Bernhard McPherson and Hand, Chartered
901 Fifteenth Street, NW, Suite 700
Washington, DC 20005-2327
(Attorney for SEA, Inc.)

Frederick M . Joyce
Christine McLaughlin
Joyce & Jacobs
2300 M Street, N.W., Suite 130
Washington, DC 20037
(Attorneys for Metrocall, Inc.)

Frederick M . Joyce
Christine McLaughlin
Joyce & Jacobs
2300 M Street, N.W., Suite 130
Washington, DC 20037
(Attorneys for RAM Technologies, Inc)

Frederick M . Joyce
Christine McLaughlin
Joyce & Jacobs
2300 M Street, N.W., Suite 130
Washington, DC 20037
(Attorneys for Network USA)

Norman P. Leventhal
Raul R. Rodriguez
Leventhal, Senter & Lerman
2000 K Street, N.W., Suite 600
Washington, DC 20006-1809
(Attorneys for TRW, Inc.)

Paul J. Feldman
Fletcher, Heald & Hildreth
1300 North 17th Street, 11th Floor
Rosslyn, Virginia 22209
(Attorney for Roseville Telephone Company)

Harold C. Davis
Executive V.P., Business Development
Smartlink CDevelopment Limited Partnership
1269 South Broad Street
Wallingford, Connecticut 06492

Jeffrey L. Sheldon
General Counsel
Utilities Telecommunications Council
1140 Connecticut Avenue, N.W., Suite 1140
Washington, DC 20036

Russell H. Fox
Susan H.R. Jones
Gardner, Carton & Douglas
1301 K Street, N.W.
Suite 900, East Tower
Washington, DC 20005
(Attorneys for WJG Maritel Corporation)

Stephen G. Kraskin
Caressa D. Bennet
Kraskin & Associates
2120 L Street, NW, Suite 810
Washington, DC 20037
(Attorneys for Rural Cellular Association)

William D. Wallace
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595
(Attorney for Loral/Qualcomm Partnership, L.P.)

Dennis C. Brown
Robert H. Schwaninger, Jr.
Brown and Schwaninger
1835 K Street, N.W., Suite 650
Washington, DC 20006